

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

JOSEPH P. FRANKENBERRY,)	
)	
Petitioner,)	
)	
v.)	Civil Action No. 22-1589
)	Judge Nora Barry Fischer
)	Magistrate Judge Patricia L. Dodge
COMMONWEALTH OF PENNSYLVANIA,)	
et al.,)	
)	
Respondents.)	

ORDER OF COURT

AND NOW, this 5th day of June, 2023, upon consideration of Petitioner Joseph P. Frankenbergery’s Petition for Writ of Habeas Corpus, (Docket No. [4]), and “Rule 60(b) Motion,” which is contained within his Memorandum of Law in Support of Habeas Corpus, (Docket No. [5]), the Report and Recommendation filed by United States Magistrate Judge Patricia L. Dodge on March 3, 2023, (Docket No. [8]), recommending that such Petition and Motion be dismissed, for lack of jurisdiction, and that a certificate of appealability be denied because both the Petition and Motion constitute second or successive § 2254 petitions and Petitioner has not obtained an order from the U.S. Court of Appeals for the Third Circuit authorizing him to bring the second or successive § 2254 petitions in this Court, and the Magistrate Judge having granted Petitioner an extension of time to submit any objections by May 30, 2023, and no objections having been filed as of the date of this Order, and upon independent review of the record and consideration of the Magistrate Judge’s Report and Recommendation, which is ADOPTED as the opinion of this Court,

IT IS HEREBY ORDERED that the Petition [4] and Motion [5] are DISMISSED, for lack of jurisdiction, *see e.g., Frankenbergery v. Coleman et al.*, Civ. A. No. 09-557, Docket No. 28 (W.D. Pa. Aug. 25, 2020) (denying motion to alter judgment as second or successive § 2254

petition), *certificate of appealability denied*, App. No. 20-2838 (3d Cir. 2021), *Frankenberry v. Pennsylvania*, No. 1:21-cv-983, 2021 WL 3709495 (M.D. Pa. Aug. 20, 2021), *certificate of appealability denied*, 2022 WL 902656 (3d Cir. Jan. 11, 2022) (Frankenberry’s “latest habeas petition is an unauthorized second or successive petition...and the District Court lacked jurisdiction to consider it.”);

IT IS FURTHER ORDERED that a certificate of appealability is DENIED;

IT IS FURTHER ORDERED that the Clerk of Court shall mark this CASE CLOSED;
and,

FINALLY, IT IS ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, if any party wishes to appeal from this Order a notice of appeal, as provided in Fed. R. App. P. 3, must be filed with the Clerk of Court, United States District Court, at 700 Grant Street, Room 3110, Pittsburgh, PA 15219, within thirty (30) days.

s/ Nora Barry Fischer

Nora Barry Fischer
Senior U.S. District Judge

cc/ecf: United States Magistrate Judge Patricia L. Dodge

All counsel of record.

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